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Supreme Court of The United States

October Term, 1967

No. 971

ARTHUR F. DUMAINE

versus

STATE OF LOUISIANA

Opposition of State of Louisiana to
Petition for a Writ of Certiorari
To Supreme Court of Louisiana

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OPPOSITION OF STATE OF LOUISIANA TO PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF LOUISIANA

STATEMENT OF THE CASE

Some time during 1967 the Honorable Frank J. Shea, Judge of Section G of the Criminal District Court for the Parish of Orleans, appointed Attorney Arthur Dumaine, petitioner herein, to represent Robert Broussard, who was charged by the State of Louisiana with attempted burglary in *State of Louisiana vs. Robert Broussard,* no. 200,645 on the docket of the Criminal District Court for the Parish of Orleans. Mr. Dumaine accepted the appointment and became attorney of record in the case.

On October 9, 1967, approximately two weeks before the date for trial, Mr. Dumaine was personally served

with an Attorney's Notice of Trial by the Criminal Sheriff's Office, which Notice of Trial informed petitioner that *State v. Broussard* had been fixed for trial on October 25, 1967 at ten in the morning. See Attorney's Notice of Trial.

October 25 was a jury day. At ten o'clock when *State v. Broussard* was called for trial Mr. Dumaine was not present, although he had not informed the court that he would be either late or absent on that date. Judge Shea held the jury in the courtroom and sent sheriffs throughout the Criminal Courts Building in an attempt to find Mr. Dumaine. They were unable to do so.

At approximately 10:15 Judge Shea instructed his Minute Clerk, Max Gonzales, to call Mr. Dumaine's office to discover his whereabouts. As it happened, Mr. Dumaine was at that very moment in his office and spoke to Mr. Gonzales, who told petitioner that his presence was required in Judge Shea's court at that time.

Mr. Dumaine thereupon told the Minute Clerk that he had to be in federal court that morning, and that he could not come to Judge Shea's court.

Judge Shea then instructed Gonzales to tell Mr. Dumaine to come to his court immediately, which Mr. Dumaine refused to do, stating that he had to go to federal court. Judge Shea informed Mr. Dumaine through Gonzales that unless petitioner came to his court immediately he would send two sheriffs to bring him to court. Mr. Dumaine at this point informed Judge

Shea for the first time that his wife was ill. After a few more interchanges between Judge Shea and Mr. Dumaine, petitioner ended the telephone conversation by saying that he had to go to federal court, and that Judge Shea could send as many sheriffs as he wanted to for him but that he was not going to come to Judge Shea's court, whereupon petitioner hung up the phone and thus abruptly ended the conversation.

Shortly thereafter, Judge Shea sent two sheriffs to Mr. Dumaine's office to bring petitioner to his court. After the sheriffs left, Judge Shea received a phone call from an associate of Mr. Dumaine, who told Judge Shea that petitioner had left the office and gone to federal court. Judge Shea left instructions to have the sheriffs told where Mr. Dumaine could be found. A short time later petitioner was found by the sheriffs in federal court and taken to Judge Shea's court.

When Mr. Dumaine was brought into Judge Shea's court by the sheriffs that same morning, Judge Shea asked petitioner why he had not been present for the trial of *State v. Broussard* at ten o'clock. Petitioner replied that his wife was sick. Judge Shea next asked petitioner why he had first told Gonzales that the necessity of his being in federal court was his reason for not coming to Judge Shea's court. Petitioner did not answer this question. Judge Shea then asked petitioner why he had refused to come to his court when he spoke to Gonzales on the phone from his office. Petitioner answered that he had to go to federal court or he would have been held in contempt by that court.

Judge Shea found Mr. Dumaine guilty of contempt and sentenced petitioner to four hours in the Parish Prison, deferring the execution of sentence until such time as his wife was better.

On October 27, 1967 Mr. Dumaine applied to the Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition, obtaining a stay of sentence. On November 2, 1967 the Louisiana Supreme Court refused writs on the ground that it found no abuse of discretion after considering the Return of the Trial Judge.

On December 29, 1967 Mr. Dumaine filed a Petition For a Writ of Certiorari in this Honorable Court. Execution of sentence herein has been stayed pending a final decision in the matter by this Court.

For verification of facts set out above, see Return of Trial Judge and Attorney's Notice of Trial.

ARGUMENT

Under Louisiana law the instant case involves a direct contempt of court, as it was one committed by a contumacious failure to comply with a summons or order to appear in court, proof of service of which appears on record. See Art. 21 La. Code Crim. Proc. A person who has committed a direct contempt of court may be found guilty and punished therefor by the court without any trial, after he has been afforded an opportunity to be heard orally by way of defense or mitigation. Art. 22 La. Code Crim. Proc. When an at-

torney is adjudged guilty of a direct contempt of court, the punishment for the first offense is limited to a fine of not more than one hundred dollars, or imprisonment for not more than twenty-four hours, or both. Art. 25 La. Code Crim. Proc. Similar statutes exist in other jurisdictions. Without power to enforce discipline, courts would quickly fall into chaos.

In the present proceeding it is important to note that Mr. Dumaine had been personally served with notice of Broussard's trial — at ten in the morning on October 25, 1967 — approximately two weeks in advance of the date of trial; that Mr. Dumaine was not scheduled to appear before Judge Boyle in the Federal District Court on that same date until eleven in the morning; that petitioner had known *for nine days* that he had to be in Judge Shea's court for a trial at ten a.m. on October 25 and in Judge Boyle's court for a rearraignment at eleven a.m. that same day (petitioner received the state court notice of trial on October 9 and the federal court notice of rearraignment on October 16), and thus had ample time to file a Motion for Continuance in one of the two cases if he was of the belief that he could not handle both of them on the same day, or perhaps arrange to have an associate take his place at the rearraignment; and that neither Mrs. Dumaine's illness nor petitioner's eleven o'clock appointment in federal court can be urged as an excuse for petitioner's contemptuous refusal to appear in Judge Shea's court at ten o'clock on the morning of Broussard's trial because at this very time Mr. Dumaine was in his office with a client transacting business.

It is further submitted that the sentence of four hours in Mr. Dumaine's case reflects the mitigating circumstances of Mrs. Dumaine's illness and bears a reasonable relation to the nature and gravity of the contumacious conduct. See *United States v. Conole*, 365 F.2d 306 (3d Cir. 1966).

The right of courts to conduct their business in an untrammeled way lies at the foundation of our system of government. Courts necessarily possess the means for punishing for contempt when any conduct tends directly to prevent the orderly discharge of judicial functions. See *Wood v. Georgia*, 370 U.S. 375. Incident to the enforcement of this responsibility, courts have disciplinary powers over members of the bar. *Cohen v. Hurley*, 366 U.S. 117. Lawyers are officers of the court and the courts have a duty to supervise their conduct; courts are required to exercise this duty to preserve judicial decorum and to enforce the respectability of the legal profession. *Ex parte Burr*, 22 U.S. 529. Furthermore, lawyers have a duty, not only to their clients, but to the courts, to attend court sessions punctually, and they must not allow their private interests to conflict with those of their clients. *United States v. Anonymous*, 215 F.Supp. 111 (E.D. Tenn. 1963).

The State of Louisiana respectfully submits to this Honorable Court that Mr. Dumaine's reckless disregard of his duty to Judge Shea's court and to his client demonstrates his contempt. An unnecessary burden was thereby placed on the Louisiana treasury, the administration of justice was slowed down, and great inconvenience was caused to the court, jurors, wit-

nesses, prosecuting attorneys, etc., who were in their appointed places at the proper time. See *United States v. Anonymous,* supra.

The State of Louisiana realizes that Mr. Dumaine was upset on the date of Broussard's trial because of Mrs. Dumaines' illness during the preceding night and that petitioner had possibly conflicting appointments on that date in State and federal court. However, as has been pointed out above, petitioner was in his law office attending to his personal business at the time he should have been in Judge Shea's court, and, furthermore, he had had approximately nine days to resolve any conflict which might exist between his state and federal court appearances and had taken no steps whatsoever to handle this conflict in an intelligent, considerate fashion, or to even inform Judge Shea that such a conflict existed.

CONCLUSION

The State of Louisiana is of the respectful opinion that Judge Shea's action in finding Mr. Dumaine to be in contempt of his court and sentencing him to four hours in prison was fully justified by Mr. Dumaine's arbitrary refusal to conduct himself as a responsible attorney should, and that consequently the Application for Writ of Certiorari which has been filed herein should be denied.

Respectfully submitted,

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CERTIFICATE

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